

responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 23, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-12028 Filed 5-29-08; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given pursuant to the Clean Air Act (the "Act"), 42 U.S.C. 7413(g), and 28 CFR 50.7, that on May 15, 2008, a proposed Consent Decree, in *United States v. Michigan Sugar Co.*, Civil No. 08-12125 (E.D. Mich.), was lodged with the United States District Court for the Eastern District of Michigan, Bay City, Michigan Division. In this action, the United States sought injunctive relief and civil penalties against Michigan Sugar for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. 7470-7492, and the Plan Requirements for Nonattainment Areas ("NSR") of the Act, 42 U.S.C. 7501-7515, and the federally approved and enforceable Michigan SIP. Michigan Sugar commenced construction of a new natural gas-fired Pulp Dryer No. 3 at its Bay City Facility in 1984 without obtaining a PSD permit that addressed carbon monoxide ("CO") emissions as required by section 165 of the Act, 42 U.S.C. 7475, 40 CFR 52.21(I), and the Michigan SIP. At the same time, because Bay County was nonattainment for ozone, Michigan Sugar failed to obtain

an NSR permit that addressed volatile organic compounds ("VOC") emissions, as required by section 173 of the Act, 42 U.S.C. 7503, and R 336.1201 of the Michigan Air Pollution Control Rules that are part of the federally enforceable Michigan SIP. Further, in 1995, Michigan Sugar increased its annual hours of operation at its Bay City facility beyond the federally enforceable permit conditions for all its Pulp Dryers, Nos. 1, 2, and 3, triggering emissions increases, without obtaining a PSD permit addressing CO emissions, and an NSR permit addressing VOC emissions as required by the Act, federal regulations and the Michigan SIP.

Under the Consent Decree, Michigan Sugar shall: (1) Operate and maintain a Steam Dryer (or alternative non-air pollutant emitting sugar beet pulp drying technology) for processing sugar beet pulp at its Bay City Facility; (2) permanently shut down and decommission its three natural gas-fired Pulp Dryers on a schedule that commenced in December 2007 and will end in May 2014; (3) submit application(s) for a Title V permit modification and/or other appropriate permits under the Act for its Bay City Facility and cooperate fully with Michigan Department of Environmental Quality ("MDEQ") officials processing the application(s); (4) comply with terms and conditions of the MDEQ approved permit(s); and, (5) pay a civil penalty of \$210,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. Michigan Sugar Co.*, Civil No. 08-12125 (E.D. Mich.), and DOJ Reference No. 90-5-2-1-08726.

The proposed Consent Decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of Michigan, Bay City, Michigan Division, 101 First St., Suite 200, Bay City, MI 48708 (989-895-5712); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604-3507 (contact: Nidhi O'Meara (312-886-0568)).

During the public comment period, the proposed Consent Decree may also be examined on the following U.S. Department of Justice Web site, <http://www.usdoj.gov/enrd/>

*Consent\_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of \$9.25 for the Consent Decree and Appendix A (37 pages, at 25 cents per page reproduction costs), made payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**William D. Brighton,**

*Environmental Enforcement Section,  
Environment and Natural Resources Division.*

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BILLING CODE 4410-15-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Settlement

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Settlement in the case of *United States v. Gerke Excavating, Inc.*, Case Number 03-C-0074-C (W.D. Wis.), was lodged with the United States District Court for the Western District of Wisconsin on May 15, 2008.

This proposed Settlement concerns a complaint filed by the United States against Gerke Excavating, Inc., pursuant to sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b) and (d), for civil penalties and injunctive relief resulting from the discharge of pollutants into waters of the United States without a permit, in violation of sections 301(a) and 404 of the CWA, 33 U.S.C. 1311(a) and 1344. The proposed Settlement incorporates Gerke's previous agreement to an injunction and to restore the impacted areas, a stipulation that CWA jurisdiction exists over the impacted area, and a civil penalty.

The Department of Justice will accept written comments relating to this proposed Settlement for thirty (30) days from the date of publication of this Notice. Please address comments to Leslie K. Herje, Assistant United States Attorney, Civil Division Chief, P.O. Box 1585, Madison, Wisconsin 53701-1585, and refer to *United States v. Gerke Excavating, Inc.*

The proposed Settlement may be examined at the Clerk's Office, United States District Court for the Western District of Wisconsin, 120 N. Henry Street, Room 320, Madison, Wisconsin 53703. In addition, the proposed Settlement may be viewed at [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html).

**Leslie K. Herje,**

*Assistant United States Attorney.*

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**BILLING CODE 4410-15-M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of petitions for modification of existing mandatory safety standards.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before June 30, 2008.

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic mail:* [Standards-Petitions@dol.gov](mailto:Standards-Petitions@dol.gov).

2. *Facsimile:* 1-202-693-9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by

hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

#### **FOR FURTHER INFORMATION CONTACT:**

Lawrence D. Reynolds, Office of Standards, Regulations, and Variances at 202-693-9449 (Voice), [reynolds.lawrence@dol.gov](mailto:reynolds.lawrence@dol.gov) (E-mail), or 202-693-9441 (Telefax), or contact Barbara Barron at 202-693-9447 (Voice), [barron.barbara@dol.gov](mailto:barron.barbara@dol.gov) (E-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers].

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

##### **II. Petitions for Modification**

*Docket Number:* M-2008-020-C.

*Petitioner:* Rockhouse Creek Development, LLC, P.O. Box 1389, Gilbert, West Virginia 25621.

*Mine:* No. 2 Mine, MSHA I.D. No. 46-08636, No. 6 Mine, MSHA I.D. No. 46-08268, and No. 9 Mine, MSHA I.D. No. 46-08976 located in Logan County, West Virginia; and No. 3 Mine, MSHA I.D. No. 46-08778 and No. 8 Mine, MSHA I.D. No. 46-09018 located in Mingo County, West Virginia.

*Regulation Affected:* 30 CFR 75.1101-1(b) (Deluge-type water spray systems).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance in lieu of using blow-off dust covers for deluge-type water spray nozzles. The petitioner proposes to remove blow-off dust covers from the nozzles and continue weekly inspections and functional testing of the complete deluge-type water spray system. The petitioner states that: (1) Its water spray system consists of an

average of thirty sprays along each of approximately ten primary belt-conveyor drives and an average of sixty sprays along each of eight secondary drives; (2) currently each nozzle is provided with a blow-off dust cover; (3) in view of the frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; and (4) to recap the large number of covers on a weekly basis after each inspection and functional test is burdensome. The petitioner asserts that the proposed alternative method at all times guarantee no less than the same measure of protection afforded the miners than that under the existing standard.

*Docket Number:* M-2008-021-C.

*Petitioner:* TJS Mining Company, Inc., 2340 Smith Road, Shelocta, Pennsylvania 15774.

*Mine:* Rossmoyne #1 Mine MSHA I.D. No. 36-09075, located in Armstrong County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.500(b), (c), and (d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of low-voltage or battery-powered non-permissible equipment in or inby the last open crosscut under controlled conditions, for testing and diagnosing the mining equipment, for advancing surveyor sites in the working sections, and for final surveying in the return areas of the mine. The petitioner states that: (1) The use of non-permissible low-voltage or battery-powered equipment will be limited to: laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, insulation testers, battery operated drills, electronic transits, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, digital cameras, and electronic tachometers; (2) other testing and diagnostic equipment may be used if approved in advance by MSHA's District Office; (3) non-permissible electronic testing and diagnostic equipment will be used only when equivalent permissible equipment is not available; (4) all other test and diagnostic equipment used within 150 feet of pillar workings will be permissible; (5) all non-permissible electronic testing and diagnostic equipment used in or inby the last open